

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

K & C ERECTORS, LLC

Employer

and

Case 33-RC-4845  
Stipulation

BRIDGE, STRUCTURAL, AND REINFORCING  
IRON WORKERS, LOCAL UNION NO. 1, AFL-CIO

Petitioner

and

ILLINOIS DISTRICT COUNCIL NO. 1 OF THE  
INTERNATIONAL UNION OF BRICKLAYERS AND  
ALLIED CRAFTWORKERS, AFL-CIO

Intervenor

**REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS AND  
OBJECTIONS, ORDER APPROVING STIPULATION, ORDER APPROVING  
WITHDRAWAL OF CERTAIN OBJECTIONS AND RECOMMENDATIONS**

This report contains the Regional Director's recommendations regarding objections and determinative challenged ballots. The Intervenor filed 3 objections<sup>1</sup> but subsequently requested withdrawal of one of those objections. The remaining objections allege that the Employer omitted employee Michael Mendoza from the Excelsior list of eligible voters and that the Regional Director disenfranchised Mendoza by failing to allow adequate time for Mendoza to return his ballot.

**Procedural History**

Pursuant to a petition filed on March 19, 2004<sup>2</sup> and pursuant to a Stipulated Election Agreement approved by the Regional Director on March 26, an election by mail ballot was

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<sup>1</sup> A copy of the Intervenor's objections is attached as Exhibit 1.

<sup>2</sup> All dates herein are 2004 unless otherwise stated.

conducted on April 21, among employees of the Employer in the following appropriate collective-bargaining unit:

All full-time and regular part-time employees employed by the Employer from its facility located in Prairie Grove, Illinois; but excluding all operating engineers, office clericals, professional employees, guards and supervisors as defined in the Act.

The tally of ballots made available to the parties at the conclusion of the election shows the following results:

Approximate number of eligible voters .....	11
Void ballots .....	1
Votes cast for Petitioner.....	3
Votes cast for Intervenor.....	2
Votes cast against participating labor organization .....	0
Valid votes counted .....	5
Challenged ballots.....	4

Challenges are sufficient in number to affect the results of the election.

Timely objections to conduct of the election and to conduct affecting the results of the election were filed by the Intervenor on May 13.

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations Series 8, as amended, the Regional Director caused an investigation to be made of the objections. All evidence adduced during the investigation has been fully and carefully considered by the Regional Director who reports and orders as follows:

### **Background**

The Employer is engaged in the building and construction industry as a contractor erecting steel and pre-cast concrete. The Employer is signatory to contracts, executed pursuant to Section 8(f) of the Act, with both the Petitioner and Intervener covering the employees in the unit. At the time of the election, there were approximately 11 employees in the above unit under the overall supervision of Employer Treasurer William VonDerAhe.

## **THE CHALLENGED BALLOTS**

### **JACK BERANEK, FRANCIS SANDERSON, THOMAS SAVORY, MARTIN SIKRAJI, .**

The ballot of Jack Beranek was challenged by the Petitioner on the ground that he is a supervisor within the meaning of Section 2(11). The ballot of Francis Sanderson was challenged by the Intervenor on the ground that he is a supervisor within the meaning of Section 2(11) of the Act. The ballot of Thomas Savory was challenged by the Intervenor on the ground that he is not eligible to vote under the *Daniel/Steiny*<sup>3</sup> formula for eligibility to participate in elections involving construction industry employers. The ballot of Martin Sikraji was challenged by the Petitioner on the ground that he is not an employee in the unit.

On May 24 the Petitioner, Intervenor and Employer entered into a Stipulation<sup>4</sup> in which they agree that the Regional Director, without making further findings of fact or conclusions of law, and without recommending to the National Labor Relations Board, may sustain the challenges to the ballots of Jack Beranek, Francis Sanderson, Thomas Savory and Martin Sikraji. The parties also expressly waive their right to a hearing in this matter and the right to file exceptions to the Regional Director's Report on Challenged Ballots and Objections insofar as it pertains to those challenged ballots.

The Regional Director, having carefully considered the matter, and having concluded that the Stipulation of the parties is not inconsistent with the purposes and policies of the Act,

IT IS HEREBY ORDERED that the Stipulation is approved.

## **THE OBJECTIONS**

The Intervenor requested withdrawal of Objection 3. Because that request does not appear inconsistent with the purposes and policies of the Act, it is approved.

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<sup>3</sup> *Daniel Construction Co.* 133 NLRB 264 (1961) as modified by *Steiny & Co.* 308 NLRB 1323 (1992)

<sup>4</sup> A copy of the Stipulation is attached as Exhibit 2.

## **Objections 1 and 2**

Objections 1 and 2 are considered conjunctively because their resolution is dependent upon the same facts and circumstances. In its first objection, the Intervenor alleges that the Employer improperly omitted Michael Mendoza from the Excelsior list of eligible voters because he was serving in the military and that the Employer failed to notify the Intervenor of Mendoza's deployment at the time the Stipulated Election Agreement was signed. In its second objection, the Intervenor alleges that although the Regional Director mailed a ballot to Mendoza, there was insufficient time allowed for the return of Mendoza's ballot and he was thereby disenfranchised. The Petitioner takes the position that the objections do not provide a basis upon which the election may be set aside. The Employer takes no position with respect to the objections.

In support of its objections, the Intervenor argues that Mendoza is currently serving in Afghanistan as an active duty reservist in the United States Army National Guard. Because Mendoza is a reservist, the Intervenor contends that he has a reasonable expectation of returning to work and therefore is an employee eligible to vote pursuant to the *Daniel/Steiny* formula. The Intervenor also contends that Mendoza should have been afforded 30 days to return his ballot, notwithstanding that the Stipulated Election Agreement provided for 14 days within which employees were to return their ballots. Also, the Intervenor contends that it was not aware of Mendoza's military status prior to signing the Stipulated Election Agreement even though Mendoza was a member of the Intervenor.

The Petitioner argues that the Employer inadvertently omitted Mendoza from the Excelsior list because the Employer did not understand the eligibility requirements set forth in the *Daniel/Steiny* formula and this error is not sufficient to warrant a new election. The Petitioner further argues that even if the Employer had intentionally omitted Mendoza from the Excelsior list, Mendoza was not disenfranchised by the Employer's omission because Mendoza was mailed

a ballot in accordance with the parties' agreement in the Stipulated Election Agreement. As to the Intervenor's argument that Mendoza should have been afforded 30 days to return his ballot, the Petitioner argues that this is contrary to the details of the Stipulated Election Agreement and therefore, should be dismissed.

Certain facts are uncontested. Mendoza worked for the Employer from January 8, 2003, until April 18, 2003, more than a year before the election date yet enabling him to vote under the *Daniel/Steiny* formula. Mendoza worked for the Employer as a bricklayer apprentice and was a member of the Intervenor. Sometime between April 2003 and November 2003, and continuing through to the date of this report, Mendoza has been serving in the military in Afghanistan. On April 16, the Intervenor notified the Regional Director that it contended that Mendoza was an eligible voter and requested that a ballot be mailed to Mendoza at his military address. The Intervenor did not request modification of the Stipulated Election Agreement so as to allow for additional time for Mendoza to return his ballot. Mendoza was mailed a ballot on April 21, as were other employees whose names appeared on the Excelsior list of eligible voters, in accordance with the terms of the Stipulated Election Agreement. To date, Mendoza has not returned his ballot.

Contrary to the Intervenor's assertion, the investigation disclosed that Mendoza is not serving abroad as a member of an Army National Guard reserve unit. Instead, the investigation showed that Mendoza enlisted in the United States Marine Corps for a period of four years. This information has been verified by the United States Marine Corps locator service,<sup>5</sup> which has also advised the undersigned that Mendoza is not scheduled to be released from active duty until April 17, 2007. In addition, Mendoza's family has advised the undersigned that Mendoza had enlisted in the Marines for a period of four years and is currently serving in Afghanistan.

In these circumstances, the undersigned concludes that Mendoza is not an eligible voter. By necessity, Mendoza's 4-year enlistment in the Marine Corps required his resignation from employment with the Employer even though Mendoza may not have formally notified the Employer of such. Further, Mendoza's separation of employment was not occasioned by involuntary action resulting from being subject to a call-up of an Army Reserve unit which might otherwise require consideration of whether Mendoza had a continuing interest in employment with the Employer. Because his enlistment can only be viewed as a resignation of employment, Mendoza does not meet the *Daniel/Steiny* formula since his quit predated the eligibility date established in the Stipulated Election Agreement. Therefore, the Employer's failure to include Mendoza on the Excelsior list of eligible voters does not constitute a basis for setting aside the election where Mendoza was not an eligible voter. Further, since Mendoza was not an eligible voter, the failure to provide more than the two weeks specified in the Stipulated Election Agreement for the return of the ballots is immaterial.

Accordingly, the undersigned recommends Intervenor's objections 1 and 2 be overruled.

### **CONCLUSION AND RECOMMENDATION**

Having approved the Stipulation of the parties to sustain the challenges to the ballots of Jack Beranek, Francis Sanderson, Thomas Savory and Martin Sikraji, having approved the Intervenor's request to withdraw its objection 3, having recommended that the Intervenor's objections 1 and 2 be overruled, and the investigation having failed to disclose evidence of other conduct upon which the election may be set aside, it is further recommended that a Certification of Representative issue to the Petitioner<sup>6</sup>.

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<sup>5</sup> A military service which provides certain information to interested individuals.

<sup>6</sup> Under the provisions of Sections 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington, D.C. by September 2, 2004. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or

August 19, 2004

/s/ Ralph R. Tremain

Ralph R. Tremain, Regional Director  
National Labor Relations Board  
Subregion 33  
300 Hamilton Square, Suite 200  
Peoria, Illinois 61602-1248

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challenges and which are not included in this Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

BEFORE  
THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

In the Matter of:

K & C Erectors

Employer  
and  
Bridge, Structural, and Reinforcing Iron  
Workers, Local Union No. 1, AFL-CIO

33-RC-4845

Petitioner

and  
Illinois District Council No. 1 of the International  
Union of Bricklayers and Allied Craftworkers, AFL-CIO

Intervenor

**OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF  
THE ELECTION**

Illinois District Council No. 1 of the International Union of Bricklayers and Allied  
Craftworkers, AFL-CIO, the Intervenor in the captioned case, pursuant to § 102.69 of the Rules  
and Regulations of the National Labor Relations Board files the following objections to the  
conduct of the election held on May 6, 2004, and submits the following conduct interfered with  
the conduct of the election:

Objection 1: The Employer improperly omitted employee Michael Mendoza from the  
Excelsior List because he was in military service although he was eligible  
to vote and failed to mention same at the time of the stipulation for the  
election was entered into by the parties.

Objection 2: The Regional Director having been informed of Mr. Mendoza's exclusion



due to his call up to active military service failed to provide for an adequate period for the return of the ballots of an employee on military leave, the normal thirty day period, and thus failed to provide Mr. Mendoza with a proper opportunity to vote by mail and thereby improperly disenfranchised him.

Objection 3: Bridge, Structural, and Reinforcing Iron Workers, Local Union No. 1, AFL-CIO (“Local Union No. 1” ) through their agents and the Employer through a supervisory employee told employees who were members of the Bricklayer’s Union that they would immediately be issued union cards in Local Union No. 1 and told employees that they would immediately become full, regular members of Local Union No 1 if they voted for Local No. 1, and would be provided work accordingly. This offer was in the power of Local 1 to deliver and contrary to the practice of Local 1 and was an improper inducement to employees in order to influence their vote to select Local 1 as the bargaining agent.

For the above stated reasons, the election should be set aside and a new election should be directed.

Respectfully submitted

/s/ Ronald M. Willis  
Ronald M. Willis  
One of the attorneys for  
District Council No. 1

Barry Bennett  
Ronald M. Willis  
Dowd, Bloch & Bennett  
8 S. Michigan Avenue -1900  
Chicago, Illinois 60603

## CERTIFICATE OF SERVICE

I, Ronald M. Willis, an attorney, hereby certify that I caused to be served a copy of the Objections to the Conduct Affecting the Election in Case No. 33 RC 4845 on the following by facsimile on May 13, 2004 and by depositing a copy in the United States Mail, postage prepaid, on May 13, 2004:

(815-459-5855)  
K & C Erectors, LLC  
Mr. Christian R. Newkirk  
2220 Route 176  
Prairie Grove, IL 60014

(312-946-9818)  
Patrick E. Deady  
Hogan & Marren, Ltd.  
205 N. Michigan Avenue  
Suite 4200  
Chicago, Illinois 60601

(708-366-6691)  
Daniel Caliendo  
Bridge, Structural and Reinforcing  
Iron Workers, Local Union No. 1  
7720 West Industrial Drive  
Forest Park, Illinois 60130

/s/ Ronald M. Willis

Exhibit 1

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

K & C ERECTORS, LLC

Employer

and

Case 33-RC-4845

BRIDGE, STRUCTURAL, AND REINFORCING IRON  
WORKERS, LOCAL UNION NO. 1, AFL-CIO

Petitioner

and

ILLINOIS DISTRICT COUNCIL NO. 1 OF THE  
INTERNATIONAL UNION OF BRICKLAYERS AND  
ALLIED CRAFTWORKERS, AFL-CIO

Intervenor

**STIPULATION**

1. **IT IS HEREBY STIPULATED** by and between K & C Erectors, LLC, Bridge, Structural, and Reinforcing Iron Workers, Local Union No. 1, AFL-CIO, and Illinois District Council No. 1 of the International Union of Bricklayers and Allied Craftworkers, AFL-CIO, for the purposes of the above-styled proceeding, that:

2. Pursuant to a petition filed on March 19, 2004, and a Stipulated Election Agreement approved by the Regional Director on March 26, 2004, there was an election conducted by mail ballot on April 21, 2004, among employees of the Employer in the following appropriate collective-bargaining unit:

All full-time and regular part-time employees employed by the Employer from its facility located in Prairie Grove, Illinois; but excluding all operating engineers, office clericals, professional employees, guards and supervisors as defined in the Act.

3. The Tally of Ballots made available to the parties at the conclusion of the election discloses the following results:

Approximate number of eligible voters .....	11
Void ballots .....	1
Votes cast for Petitioner.....	3
Votes cast for Intervenor.....	2
Votes cast against participating labor organization .....	0
Valid votes counted .....	5
Challenged ballots.....	4
Valid votes counted plus challenged ballots.....	9

Challenges are sufficient in number to effect the results of the election.

4. Timely objections to conduct of the election and to conduct affecting the results of the election were filed by the Intervenor within the time provided.

5. The ballot of Francis Sanderson was challenged by the Intervenor on the ground that he is a supervisor within the meaning of Section 2(11) of the act; the ballot of Thomas Savory was challenged by the Intervenor on the ground that he is not an eligible voter under the *Daniel Construction Company* formula. The ballot of Martin Sikraji was challenged by the Petitioner on the ground that he is not an employee in the unit and the ballot of Jack Beranek was challenged by the Petitioner on the ground that he is a supervisor within the meaning of Section 2(11) of the Act.

6. **IT IS HEREBY STIPULATED** that the Regional Director, without making findings of fact or conclusions of law, and without recommending to the National Labor Relations Board, may sustain the challenges to the ballots of the aforementioned voters.

7. The parties hereby waive their right to a decision by the National Labor Relations Board or to a hearing with respect to the challenges to the ballots of Francis Sanderson, Thomas Savory, Martin Sikraji and Jack Beranek, and to file exceptions to the Regional Director's

Report on Challenged Ballots and Objections in Case 33-RC-4845, insofar as it pertains to those challenged ballots.

K & C Erectors, LLC

Dated: 5/24/04 By: William R. Von Der Ahe Vice President  
(Representative) (Title)

BRIDGE, STRUCTURAL, AND REINFORCING IRON WORKERS, LOCAL UNION NO. 1,  
AFL-CIO

Dated: 5/21/04 By: Patrick E. Deady Attorney  
(Representative) (Title)

ILLINOIS DISTRICT COUNCIL NO. 1 OF THE INTERNATIONAL UNION OF  
BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO

Dated: 5/24/04 By: Ron Willis Attorney  
(Representative) (Title)

Approved By: /s/ Ralph R. Tremain  
Ralph R. Tremain, Regional Director  
National Labor Relations Board  
Subregion 33  
300 Hamilton Boulevard, Suite 200  
Peoria, IL 61602-1246

Date: 8/19/04

Exhibit 2